



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,004	06/22/2001	Patrick Pittelli	111983.122	8509

28089 7590 06/23/2003

HALE AND DORR LLP  
300 PARK AVENUE  
NEW YORK, NY 10022

EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 06/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/888,004

Applicant(s)

PITTELLI, PATRICK

Examiner

Beth Van Doren

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The following is Final Office Action in response to communications received 04/17/03. Claims 5, 10, and 22 have been amended. Claim 27 has been added. Claims 1-27 are now pending in this application.

#### ***Response to Amendment***

2. Applicant's amendments to claims 5, 10, and 22 are sufficient to overcome the claim objections set forth in the previous office action.

#### ***Response to Arguments***

3. Claim 27 was added in the communications received on 04/17/03. Therefore, this claim has been addressed in the art rejection below. Examiner points out that the art rejections from the previous office action with respect to claims 1-26 have been maintained and are repeated below.

4. Applicant's arguments with regard to the rejections of claims 1-26 based on Riffage.com (articles "Curtain closes for Riffage.com" by Lee, "Riffage.com picks up indie record label" by Borland, "Bands and fans rub elbows on Riffage.com" by McIntosh, and screenshots disclose the aspects of Riffage.com) have been fully considered but they are not persuasive. In the remarks, the Applicant argues that Riffage.com does not teach or suggest (1) identifying market demand for an artist based on financial contributions the artist receives directly from the user or (2) financially contributing to an artist and receiving no merchandise in return, and that (3) in the present invention, unlike Riffage.com, the artists do not have to invest their own money but merely their work and therefore receives money to produce and commercialize themselves and

Art Unit: 3623

(4) in the present invention monies in a fund are distributed to an artist without the prerequisite of sales occurring, unlike Riffage.com.

In response to Applicant's argument that Riffage.com does not teach or suggest (1) identifying market demand for an artist based on financial contributions the artist receives directly from the user, Examiner respectfully disagrees and further asserts that Riffage.com is a web site that distributes the music of unsigned artists and based on the number of downloads or the amount of artist merchandise purchased through financial contributions of fans, the artists market demand is observed and identified. See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, cd and t-shirt purchases, etc.

Examiner asserts that the term contribution is defined as the act of contributing (see BB, section 1, of the attachment) and contributing, or to contribute, is defined as to give or supply in common with others, to give a part to a common fund or store, to play a significant part in bringing about an end or result, and/or to help bring about a result (see AA, sections 1 and 2, and CC, section 1, of the attachment). Therefore, a user that downloads from and purchases from an artist of the Riffage.com site is contributing to an artist by giving money in common with others to play a part in supporting an artist and bringing about the result of aiding an artist in becoming signed, making money, staying a band, etc. Helping "starving artist" bands become signed and gain exposure is the mission statement of Riffage.com and thus users of the site know that they are contributing to an unsigned bands through their financial purchases.

Art Unit: 3623

In response to Applicant's argument that Riffage.com does not teach or suggest (2) financially contributing to an artist and receiving no merchandise in return, Examiner points out that the limitations of claims 1-26 recite "contributing to a fund for said artist" and do not include that no merchandise may be received in return. The definition of contribute, as explained above, does not exclude the receipt of merchandise. Furthermore, the claimed invention includes in claim 3 that a certificate is given to users that contribute to artists that attain a specific level of contributions. Therefore, the invention suggests an exchange of an item with the user for the financial contribution.

In response to Applicant's argument that (3) in the present invention, unlike Riffage.com, the artists do not have to invest their own money but merely their work and therefore receive money to produce and commercialize themselves, Examiner points out that, as claimed, the artist of the invention receives a portion of the funds "to produce and commercialize the artist". This statement does not exclude that the artist has previously been commercialized or produced. The fact that a person in the public (i.e. the user) would know of the existence of the artist in order to contribute funds to the artist means that some sort of commercialization has gone on. Therefore, Examiner respectfully disagrees with the assertion of the Applicant. If other features exist that are not recited in the claims of the invention, these features should be incorporated into the claims in order to receive specific patentable weight.

In response to Applicant's argument that (4) in the present invention, monies in a fund are distributed to an artist without the prerequisite of sales occurring, unlike Riffage.com, Examiner points out that the limitations of the claim do not exclude that sales can occur, but

Art Unit: 3623

merely that an artist gets a level of funds from the contributions. Based on the definition of contribution set forth above, a sale does not exclude a contribution.

5. Applicant's argument with regards to the rejections based on Riffage.com in view of "7up launches a one-of-a-kind Internet Music Program" (Business Wire) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (5) Riffage.com does not disclose receiving contributions from users and (6) "7up launches a one-of-a-kind Internet Music Program" does not disclose receiving financial contributions from a user.

In response to Applicant's argument that (5) Riffage.com does not disclose receiving contributions from users, Examiner respectfully disagrees and further asserts the statements set forth above with regards to arguments (1) and (2).

In response to Applicant's argument that (6) "7up launches a one-of-a-kind Internet Music Program" does not disclose receiving financial contributions from a user, Examiner points out that this reference was not relied upon to teach financial contributions. Examiner reasserts the 35 USC § 103 rejections set forth below.

6. Applicant's argument with regards to the rejections based on Riffage.com in view of "TV Media goes from covering the news to making it" (PR Newswire) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (7) Riffage.com does not disclose receiving contributions from users, (8) it is not obvious to combine the two references because there is no reason, suggestion, or motivation from the prior art to do so, (9) "TV Media goes from covering the news to making it" teaches away from supporting an artist because it

Art Unit: 3623

teaches raising money for an institution, or (10) “TV Media goes from covering the news to making it” does not teach determining market demand for individual artists based on user contributions.

In response to Applicant’s argument that (7) Riffage.com does not disclose receiving contributions from users, Examiner respectfully disagrees and further asserts the statements set forth above with regards to arguments (1) and (2).

In response to Applicant’s argument that (8) it is not obvious to combine the two references because there is no reason, suggestion, or motivation from the prior art to do so, Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Riffage.com discloses a tool that markets and obtains exposure and funds for smaller, unsigned artists. “TV Media goes from covering the news to making it” also discusses financial contributions to artists from supporters. Therefore, since both Riffage.com and “TV Media goes from covering the news to making it” discuss receiving funding from supporters of artists in an attempt to reach a predefined level of funding, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Riffage.com to incorporate the teachings of “TV Media goes from covering the news to making it”.

In response to Applicant’s argument that (9) “TV Media goes from covering the news to making it” teaches away from supporting an artist because it teaches raising money for an

Art Unit: 3623

institution, Examiner respectfully disagrees. “TV Media goes from covering the news to making it” discusses financial contributions to an institution from supporters. However, the institution is made up of artists. Therefore, this reference does not teach away from supporting an artist because the institution is a group of artists.

In response to Applicant’s argument that (10) “TV Media goes from covering the news to making it” does not teach determining market demand for individual artists based on user contributions, Examiner reasserts the 35 USC § 103 rejections set forth below and points out that in these rejections, “TV Media goes from covering the news to making it” was relied upon to teach the refunding or redistributing of user contributions.

**Therefore, the art rejections of claims 1-26 set forth in the previous office action are maintained and repeated below.**

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).



Art Unit: 3623

8. Claims 1, 7, 9, 10-13, 15, 17, 20, 22, and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Riffage.com. The following references disclose different aspects of Riffage.com:

- i. Article "Curtain closes for Riffage.com" by Lee (referred to herein as reference A).
- ii. Article "Riffage.com picks up indie record label" by Borland (referred to herein as reference B).
- iii. Article "Bands and fans rub elbows on Riffage.com" by McIntosh (referred to herein as reference C).
- iv. Screenshot of Riffage.com, dated 10/12/1999, (referred to herein as reference D).

9. As per claim 1, Riffage.com teaches a computer-implemented method for determining the market demand for an artist comprising:

receiving user input to determine which artist to select from a pool of artists (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

determining the market demand for said selected artist based on users contributing to a fund for said artist (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, cd and t-shirt purchases, etc.); and

Art Unit: 3623

identifying artists that attain a predefined level of user contributions (See reference A, page 2, section 1, and reference B, page 1, section 4, which discusses artists that hit a predefined level of contributions automatically being identified).

10. As per claim 7, Riffage.com discloses a method further comprising maintaining information on said users, and using said information to market said artist (See reference C, page 2, sections 3, 4, 5, and 6, which discusses a user having a membership to the network and information on a user being maintained and used to market an artist).

11. As per claim 9, Riffage.com discloses an apparatus for determining the market demand for an artist comprising:

means for receiving user input to determine which artist to select from a pool of artists (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

means for determining the market demand for said selected artist based on users contributing to a fund for said artist (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc.); and

means for identifying selected artists that attain a predefined level of user contributions (See reference A, page 2, section 1, and reference B, page 1, section 4, which discusses artists that hit a predefined level of contributions automatically being identified).

12. As per claim 10, Riffage.com teaches a method for an artist to obtain financial support comprising:

receiving and storing on a file server a sample of the artist work (See reference A, page 1, section 1, reference C, page 1, sections 2 and 3, and page 2, section 1-3, and reference D, section 2, which provides means for receiving and storing works of artists);

evaluating the artist's work from a pool of artists (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

selecting an artist based on said artist's work to be eligible for financial contributions from users (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, wherein the artist is selected by users as eligible for financial contributions for said user); and

establishing a fund of any such contributions for an artist who meets a predefined criteria (See reference C, page 1, sections 2, 3, and 4, and page 2, sections 1 and 2, which discloses users making financial contributions to artists that are registered with the system. When an artist reaches a predefined level of support from users he/she is automatically sent to a recording label representative. See reference B, section 4).

13. As per claim 11, Riffage.com teaches a method further comprising making the fund available to the artist to produce a musical record (See reference A, page 1, section 1, reference B, page 1, section 4, and reference C, page 1, section 4, and page 2, section 1, which discloses

Art Unit: 3623

the artist having access to the fund, thus generating a profit for the artist, and the artist being able to produce a musical record).

14. As per claim 12, Riffage.com teaches a method further comprising releasing the fund to the artist based on the artist meeting predefined criteria (See reference A, page 1, section 1, and reference C, page 1, sections 2-4, and page 2, section 1-2, wherein a registered artist that makes a profit for the network is entitled to a portion of the funding).

15. As per claim 13, Riffage.com discloses a method further comprising returning the selected artist to the pool of artists if artist fails to meet predefined criteria (See reference B, page 1, section 4, wherein the selected artist is offered to record label talent scouts and may or may not be signed to a label. If not, the artists remains in the general pool of artists).

16. As per claim 15, Riffage.com teaches a method wherein selecting an artist to be eligible for financial support is determined by a panel of individuals (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving inputs from a group of individuals into the network to determine the artist with the strongest following for selection from a pool of artists. See also reference B, section 4, where a panel of individuals selects artists).

17. As per claim 17, Riffage.com discloses a computer implemented system for determining the market demand for an artist comprising:

a file server (See reference C, page 2, sections 5 and 6, which discloses a network that serves files to a user); and

a processor programmed for implementing instructions for:

Art Unit: 3623

receiving and storing user input on said file server to determine which artist to select from a pool of artists (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

determining the market demand for said selected artist based on users contributing to a fund for said artist (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc.); and

identifying artists that attain a predefined level of user contributions (See reference A, page 2, section 1, and reference B, page 1, section 4, which discusses artists that hit a predefined level of contributions automatically being identified).

18. As per claim 20, Riffage.com discloses a system comprising instructions for selecting artists from a pool of artists using inputs from a panel of individuals (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving inputs from a group of individuals into the network to determine the artist with the strongest following for selection from a pool of artists. See also reference B, section 4, where a panel of individuals selects artists).

19. As per claim 22, Riffage.com discloses a system for presenting artists to determine market demand for artists comprising a computer programmed having instructions for implementing the method of:

Art Unit: 3623

receiving and storing work of artists on a file server (See reference A, page 1, sections 1 and 2, reference B, page 1, section 4, and reference C, page 1, sections 2 and 3, and page 2, sections 5 and 6, which disclose receiving and storing works of artists on a network. This network serves the files to members);

dividing said work into categories (See reference D, page 1, section 1, which discloses different categories of music that the works are grouped into);

selecting said work from said categories (See reference A, page 1, section 1, reference C, page 2, section 2, and reference D, page 1, section 1, wherein users select works from the categories using the genres menu);

elevating selected works into positions that are eligible to receive direct financial support from users (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, wherein selected works are in a position that is eligible to receive financial support from users); and

promoting the artists who receive a predefined amount of direct financial contributions (See reference A, page 1, section 1, and page 2, section 1, and reference B, page 1, section 4, which discusses promoting the artists who receive an level of financial contributions that automatically promotes them to record label representatives).

20. As per claim 24, Riffage.com teaches an article comprising a computer-readable medium that stores computer executable instructions for causing a computer system to:

receive user input to determine which artist to select from a pool of artists (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page

Art Unit: 3623

2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

determine the market demand for said selected artist based on users contributing to a fund for said artist (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc.); and

identify artists that attain a predefined level of user contributions (See reference A, page 1, section 1, and page 2, section 1, and reference B, page 1, section 4, which discusses promoting the artists who receive an level of financial contributions that automatically promotes them to record label representatives).

21. As per claim 25, Riffage.com teaches an article wherein users select and contribute to an artist through a network connection (See reference A, page 1, sections 1 and 2, reference C, page 1, sections 1, 2, 3, and 4, and page 2, sections 5 and 6, and reference D, page 1, which discloses a network connection between a user and the website by which users select artists and contribute to their funds through downloads and purchases).

22. As per claim 26, Riffage.com discloses a computer implemented apparatus for determining market demand for an artist comprising:

means for receiving and storing works of artists (See reference A, page 1, section 1, reference C, page 1, sections 2 and 3, and page 2, section 1-3, and reference D, section 2, which provides means for receiving and storing works of artists);

Art Unit: 3623

means for enabling users to access the stored works (See reference A, page 1, sections 1 and 2, reference C, page 1, sections 1, 2, 3, and 4, and page 2, sections 5 and 6, and reference D, page 1, which discloses a network connection between a user and the website by which users select artists and contribute to their funds through downloads and purchases);

means for receiving user input to elevate artist from the general artist pool (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving user input into the network to determine the artist with the strongest following to select from a pool of artists);

means for making elevated artists eligible for financial contributions from users (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, wherein selected works are in a position that is eligible to receive financial support from users); and

means for making financial contributions from users available to artist that meet predefined criteria (See reference C, page 1, sections 2, 3, and 4, and page 2, sections 1 and 2, which discloses making financial contributions from users available to artists that bring in money and are registered with the system. When an artist reaches a predefined level of support from users he/she is automatically sent to a recording label representative. See reference B, section 4).

23. Claim 27 is rejected under 35 U.S.C. 102(e) as being anticipated by “TV Media go from Covering the news to making it” (PR Newswire).

24. As per claim 27, “TV Media go from Covering the news to making it” teaches a method for determining the market demand for an artist, the method comprising:



Art Unit: 3623

receiving input from a plurality of users to at least one of a plurality of artists (See page 1, sections 1 and 2, and page 2, wherein financial input is received from a plurality of patrons (or users of the arts) to a plurality of artists);

selecting at least one artist from said plurality of artists to receive financial contributions from said plurality of users (See page 1, sections 1 and 2, and page 2, wherein plural artists receive financial contributions from the plurality of patrons (or users of the arts)); and

identifying said at least one artist that receives a predefined amount of financial contributions, wherein said financial contributions are not in exchange for artist merchandise (See page 1, sections 1 and 2, and page 2, which discloses identifying that the multiple artists has received a predefined amount (\$1 million dollars) of financial contributions, these contributions not being made in exchange for merchandise).

### ***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 2, 3, 8, 14, 16, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riffage.com in view of “7up launches a one-of-a-kind Internet Music Program” (Business Wire). The following references disclose different aspects of Riffage.com:

- i. Article “Curtain closes for Riffage.com” by Lee (referred to herein as reference A).

Art Unit: 3623

- ii. Article “Riffage.com picks up indie record label” by Borland (referred to herein as reference B).
- iii. Article “Bands and fans rub elbows on Riffage.com” by McIntosh (referred to herein as reference C).
- iv. Screenshot of Riffage.com, dated 10/12/1999, (referred to herein as reference D).

27. As per claim 2, Riffage.com teaches a method wherein said user input is in the form of user comments, user financial inputs, user interactions, and user rankings (See reference A, page 1, section 1, and page 2, section 1, reference B, section 4, and reference C, page 1, section 3, and page 2, sections 1, 2, 5, and 6, which discuss the user inputting into the network comments, financial support, interactions, and rating/ranking information).

However Riffage.com does not expressly disclose that this input is votes.

“7up launches a one-of-a-kind Internet Music Program” discloses user input as votes (See page 1, sections 4, 5, and 6, which discloses users inputting their votes).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the users of Riffage.com include votes in the comments and ratings they supply to the network in order to more efficiently and more fairly choose the best artists by using a consistent and universal measure of artist goodness.

28. As per claim 3, Riffage.com discloses a method wherein users contribute to an artist who may attain a predefined level of user contributions and associating these users with the artist (See

Art Unit: 3623

reference A, page 1, section 1, reference B, page 1, section 4, and reference C, page 2, section 4-6, which discloses users contributing to an artist who may attain a predefined level of user contributions and also associating these users with the artist). However, Riffage.com does not expressly disclose supplying these users with a recognition certificate regarding said artist.

“7up launches a one-of-a-kind Internet Music Program” discloses giving users interacting with the network music related merchandise (See page 1, section 5).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the users of Riffage.com contributing to an artist that attains a predefined level of user contributions a certificate regarding said artist in order to increase user participation by providing incentives to contribute to the artists.

29. As per claim 8, Riffage.com discloses users contributing money to an unsigned artist (See reference B, page 2, section 2, and reference C, page 1, section 1, which discloses users giving an artist money contributions). Riffage.com further teaches choosing the best artists based on user input and contributions (See reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, section 4, and reference C, page 1, section 4, and page 2, section 1, which discusses funding being provided to the artist and the best artists attaining potential record deals). However, Riffage.com does not expressly disclose limiting the number of users permitted to contribute to said artist.

“7up launches a one-of-a-kind Internet Music Program” discloses limiting the number of users permitted to contribute to said artist to a predefined time period (See page 1, sections 5 and

Art Unit: 3623

6). However, “7up launches a one-of-a-kind Internet Music Program” does not disclose that only a predefined number of people may vote.

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to limit the number of user inputs of Riffage.com when determining the leading unsigned artists in order to more efficiently and more fairly choose the best artists by using a consistent and universal measure of artist goodness.

Furthermore, voting needs to be limited by some condition in order for a contest to end and the results to be tabulated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to limit the users of “7up launches a one-of-a-kind Internet Music Program” by number or time period in order to efficiently produce fair and timely results by establishing standards and regulations ahead of time for how the contest will occur.

30. As per claim 14, Riffage.com teaches a method wherein selecting an artist to be eligible for financial support is based on the artist who attains a large amount of user input and interaction (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc. See also reference A, page 2, section 1, and reference B, page 1, section 4, which discusses artists that hit a predefined level of contributions automatically being identified). However, Riffage.com does not expressly disclose that attaining a large amount of input and interaction is specifically attaining the largest number of user votes.

“7up launches a one-of-a-kind Internet Music Program” discloses that the artist that receives the largest number of user votes is eligible for financial support (See page 1, section 6, which discloses the artist receiving the largest number of user votes receiving a financial prize as well as the potential for a record label).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to give financial support to the artist that receives the largest number of user votes in the method of Riffage.com instead of to the artists receiving large amounts of user input and interaction in order to increase the money brought into the site by the artists by creating a competitive environment amongst the artists.

31. As per claim 16, Riffage.com teaches a method wherein selecting an artist to be eligible for financial support is determined by a panel of individuals (See reference A, page 2, section 1, reference B, sections 3 and 4, and reference C, page 1, section 3, and page 2, sections 5 and 6, which discuss receiving inputs from a group of individuals into the network to determine the artist with the strongest following for selection from a pool of artists. See also reference B, section 4, where a panel of individuals selects artists). However, Riffage.com does not expressly disclose that the artist is selected in part by a panel of individuals and in part by user votes.

“7up launches a one-of-a-kind Internet Music Program” that the artist is selected in part by a panel of individuals and in part by user votes (See page 1, sections 4-6, which outline the process of selecting the artist which involves a panel of individuals as well as voting users).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to

Art Unit: 3623

one of ordinary skill in the art at the time of the invention to use both a panel of individuals and user votes to determine the artist to receive financial support in order to increase the consistency and accuracy of the decision by having two groups reach a decision than just one.

32. As per claim 21, Riffage.com teaches a system wherein a number of artists can be selected to receive financial support (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss a number of artists selected by users to receive financial support). However, Riffage.com does not expressly disclose that this number of artists is predefined.

“7up launches a one-of-a-kind Internet Music Program” discloses that the number of artists selected is predefined (See page 1, sections 4, 5, and 6, which discloses selecting predefined numbers of artists).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to limit the number of artists that would receive financial support in order to more effectively promote and fund these artists by having more time and money to invest in a smaller number of supported artists.

33. As per claim 23, Riffage.com teaches a system comprising artists receiving financial contributions from user (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss artists receiving financial support). However, Riffage.com does not expressly disclose instructions by which the system limits the number of positions available for artists.

“7up launches a one-of-a-kind Internet Music Program” discloses instructions for limiting the number of positions available for artists (See page 1, section 4, which discloses instructions for limiting the number of positions available).

Both Riffage.com and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to limit the positions of Riffage.com available to artists for receiving financial support in order to more effectively promote and fund the artists by having more time and money to invest in a smaller number of supported artists.

34. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riffage.com. The above-cited references are used to disclose different aspects of Riffage.com.

35. As per claim 4, Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds from the user’s contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band). However, Riffage.com does not expressly disclose that the band must attain a predefined level of user contribution funds.

Riffage.com gives a service to unsigned artists in return for a cut of their profits that pays for said service. It would be obvious to one of ordinary skill in the art at the time of the invention to require a certain level of financial input for an artist before paying the artist a part of the financial input in order to increase the profitability of Riffage.com by ensuring that they are paid for their services. It would be obvious to one of ordinary skill in the art that an artist that

does not make enough money to pay for the service (ex. the band brings in no funding) should not receive a profit.

36. As per claim 5, Riffage.com teaches a method wherein comprising using said funds to produce a record from said funds when said artist is a musician (See reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, section 4, and reference C, page 1, section 4, and page 2, section 1, which discusses funding being provided to the artist, who is a musician, as well as the ability to attain a record label using the profits).

37. As per claim 6, Riffage.com teaches a method providing said artist with a level of the fund (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band). However, Riffage.com does not expressly disclose providing said artist the entire fund based on the completion of a predefined criteria.

Riffage.com discusses providing a larger amount of an artist's fund to the artist by using advertising to make up the difference in moneys as stated in reference C, page 1, section 4, and page 2, section 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the entirety of the funding to an artist of Riffage.com if the artist meets predefined criteria in order to increase the profitability of an artist to the site by giving the artist an incentive to better market himself.

38. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riffage.com in view of "TV Media goes from covering the news to making it" (PR Newswire). The above-cited references are used to disclose different aspects of Riffage.com.



Art Unit: 3623

39. As per claim 18, Riffage.com teaches a system further comprising instructions for receiving user contributions for a fund of an artist trying to attain a predefined level of user support (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc. Artists that hit a predefined level of contributions are automatically identified). However, Riffage.com does not expressly disclose refunding user contributions in the fund if the artist fails to attain a predefined level of user support.

“TV Media goes from covering the news to making it” discloses refunding user contributions in the fund if the artist fails to attain a predefined level of user support (See page 1, sections 1 and 2, and page 2, section 2, which discloses refunding a contribution to the supporter of the artists if the fund fails to reach a predefined level).

Both Riffage.com and “TV Media goes from covering the news to making it” discusses receiving funding from supporters of artists in an attempt to reach a predefined level of funding. It would have been obvious to one of ordinary skill in the art at the time of the invention to refund the contributions of users of Riffage.com if an artist does not reach a predefined level of support in order to increase the users’ confidence in the system by ensuring that the highest quality artists are being provided to the users and by ensuring that the system is standing by its agreements.

40. As per claim 19, Riffage.com teaches a system further comprising instructions for receiving user contributions for a fund of an artist trying to attain a predefined level of user

Art Unit: 3623

support (See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, purchases, etc. Artists that hit a predefined level of contributions are automatically identified). However, Riffage.com does not expressly disclose for redistributing user contributions in a different fund if the artist fails to attain this predefined level of user contributions.

“TV Media goes from covering the news to making it” discloses refunding user contributions in the fund if the artist fails to attain a predefined level of user support (See page 1, sections 1 and 2, and page 2, section 2, which discloses refunding a contribution to the supporter of the artists if the fund fails to reach a predefined level). However, “TV Media goes from covering the news to making it” does not expressly disclose redistributing user contributions in a different fund if the artist fails to attain this predefined level of user contributions.

Both Riffage.com and “TV Media goes from covering the news to making it” discusses receiving funding from supporters of artists in an attempt to reach a predefined level of funding. It would have been obvious to one of ordinary skill in the art at the time of the invention to refund the contributions of users of Riffage.com if an artist does not reach a predefined level of support in order to increase the users’ confidence in the system by ensuring that the highest quality artists are being provided to the users and by ensuring that the system is standing by its agreements.

When a contributor is refunded money he/she would redonate the contribution to the artist he/she chooses. It would have been obvious to one of ordinary skill in the art at the time of

Art Unit: 3623

the invention to redistribute the contributions in the event that an artist did not attain a predefined level of contributions in order to increase the probability of a different artist succeeding at attaining the predefined level of contributions.

***Conclusion***

**41. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

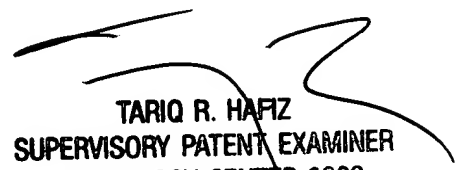
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Art Unit: 3623

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*bvd*  
bvd

June 16, 2003

  
**TARIQ R. HAFIZ**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**